

REMARKS

This is in full and timely response to the above-identified Office Action. The above listing of the claims supersedes any previous listing. Favorable reexamination and reconsideration are respectfully requested in view of the preceding amendments and the following remarks.

Claim Status/Amendments

Independent Claim 1 has been amended and currently includes a combination of (a) nano-magnetic particles; and (b) a member selected from Dead Sea salts, Dead Sea minerals, and mixtures thereof.

The term "*nano*" – is supported in original claim 10.

"a member selected from Dead Sea salts, Dead Sea minerals and mixtures thereof" is supported in the description paragraphs [0015], [0016] and in examples 3-12 of the US published application.

New dependent claim 15 has been added and is supported in the description paragraph [0016].

Dependent Claim 6 has been amended to improve form and syntax. Claim 6 defines the form of the cosmetic composition of claim 1.

Dependent claim 9 has been amended to correct a typographic mistake. Support for the correction can be found in paragraph [0010] of the US published application.

Dependent claim 10 has been cancelled inasmuch as its subject matter has been introduced into claim 1; and claims 11 and 12 have been amended to depend from claim 1.

Rejections under 35 USC § 103

1) The Examiner rejects Claims 1, 3 and 5-8, 10 and 12 under 35 U.S.C. § 103(a) as obvious over Zastrow et. al (US 5,961,988).

The Examiner contends that Zastrow '988 discloses a dermatological preparation

containing magnetically hard particles such as strontium hexaferrite which may be used in an emulsion. The composition may also contain a vegetable extract such as Babassu oil.

The examiner further contends that *"Zastrow '988 differ from the claimed invention because the specific combination of strontium hexaferrite, emulsion, and vegetable extract is not disclosed. However, the limited number of choices (four) for magnetic particles would provide sufficient motivation for one skilled in the art to choose strontium hexaferrite as the magnetic particle. Furthermore, since emulsions and a vegetable extract are exemplified in the examples, one skilled in the art would have been motivated to make the dermatological preparations in the form of an emulsion with a vegetable extract. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to form a composition comprising strontium hexaferrite in the form of an emulsion with a vegetable extract, with a reasonable expectation of success."*

- 2) The Examiner further rejects Claims 1 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Zastrow '988, as applied to claims 1,3,5-8, 10 and 12 above, and further in view of Chittofrati et. al., EP 0686447.

According to the examiner *"Zastrow '988 differ from the claimed invention because the particle size range is 100 to 550 nm instead of 2 to 20 nm. However, Chittofrati et al. disclose a process for the preparation of mixed ultrafine particles having particle size lower than 50 nm, preferably lower than 10 nm. The particles may be magnetic ferrites containing barium (see abstract and page 4, lines 35-38). Chittofrati et al. also teach that, in the case of cosmetics, "the small size and the particles uniformity are favourable characteristics for the homogeneity of the formulations and for the dispersibility of the powder in the various liquids wherein it must be used under the form of uniform dispersion" (page 2, lines 15-18). Furthermore, while Chittofrati et al. only disclose barium, they do teach that M1 having valence (II), which would include strontium, can be cited. Additionally, Zastrow '988 teach that barium hexaferrite and strontium hexaferrite are functional equivalents of each other, such that one could be substituted for the other. Therefore, it would have been obvious at the time the invention was made to use ultrafine magnetic particles made by the process of Chittofrati et al. in the dermatological preparation of Zastrow '988, with a reasonable expectation of success."*

Applicant respectfully traverses the rejection of the claims because a *prima facie* case of obviousness has not been established.

To establish a *prima facie* case of obviousness, the Examiner must satisfy three requirements. First, as the U.S. Supreme Court very recently held in *KSR International Co. v. Teleflex Inc. et al.*, *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007), "a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. ...it [may] be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. ...it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does... because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known." (*KSR, supra*, slip opinion at 13-15.) Second, the proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *Amgen Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991). Lastly, the prior art references must teach or suggest all the limitations of the claims. *In re Wilson*, 165 USPQ 494, 496 (C.C.P.A. 1970).

Applicants respectfully submit that a *prima facie* case of obviousness has not been established because, whether taken alone or in combination, neither Zastrow '988 nor Chittofrati et. al teach or suggest each and every limitation of the presently pending claims as required by *In re Wilson*.

It is clear that Zastrow '988 is different from the claimed invention by much more than lacking the specific combination of strontium hexaferrite, emulsion, and vegetable extract.

Amended claim 1 is directed to "Cosmetic compositions comprising (a) nano-magnetic particles which have a magnetic field and which are configured to be topically administrated on

skin; and (b) a member selected from Dead Sea salts, Dead Sea minerals, and mixtures thereof."

In contrast, Zastrow '988 is directed to a dermatological preparation containing hard particles such as strontium hexaferrite. However, US '988 does not teach or suggest combination of nano-magnetic particles with a member selected from Dead Sea salts, Dead Sea minerals, and mixtures thereof. Therefore, Applicants submit that Zastrow '988 does not teach or suggest every element of the presently pending subject matter.

Chittofrati et. al does not remedy the deficiencies of Zastrow '988 . Chittofrati et. al merely discloses a process for the preparation of mixed ultrafine particles having particle size lower than 50 nm, preferably lower than 10 nm. Accordingly, Applicants submit that, whether taken alone or in combination, neither of Zastrow '988 nor Chittofrati et. al teach or suggest every element of the presently pending subject matter.

The combination of (a) nano-magnetic particles; and (b) a member selected from Dead Sea salts, Dead Sea minerals, and mixtures thereof results in a unique improvement of skin parameters due to combined effect of the two components. Topical application of the Dead Sea salts/ minerals leads to an increased hydration of the skin due to their humecting properties, related to the high concentration of salts which creates osmotic pressure that attracts water from the deeper layers of the skin to the epidermis, causing improved hydration. Due to their magnetic fields, the nano-magnetic particles absorbed to skin surface causes improve skin blood circulation.

The present invention as defined by amended claim 1 is both surprising and unexpected in light of the cited documents.

The effect achieved when combining nano-magnetic particles and a member selected from Dead Sea salts, Dead Sea minerals, and mixtures thereof is advantages compared to the effect of the said Dead Sea member applied separately.

Appended to this response are experimental data in the form of a Declaration under 37 CFR § 1.132, supporting the above argument in which a composition comprising dead sea

mineral mud (Dermud) was compared to a composition comprising dead sea mineral mud + nano-magnetic particles.

This will be highly beneficial in the treatment of skin diseases and/or conditions such as psoriasis, xerosis, seborrheic dermatitis, eczema, atopic dermatitis and vitiligo.

- 3) The Examiner rejects Claims 1, 3 and 5-10 under 35 U.S.C. § 103(a) as being unpatentable over Zastrow et. al., US patent 5,800,835.

The examiner contends that "Zastrow '835 disclose preparations for use in the dermatological field to be applied to the skin (col. 2, lines 27-28) containing magnetic particles (col. 1, lines 45-50) such as strontium hexaferrite (col. 1, lines 53-55) in the form of emulsions (for example, Examples 13 and 14). The compositions may preferably have rosmarinic acid or another virucidal or virustatic active ingredient occurring in plants (col. 5, lines 12-14). Zastrow '835 differs from the claimed invention because the specific combination of strontium hexaferrite, emulsion, and vegetable extract is not disclosed. However, since the plant extract of rosmarinic acid is specifically named and the combination of strontium hexaferrite in an emulsion is exemplified, it would have been prima facie obvious to a person having ordinary skill in the art to add rosmarinic acid to the emulsions of Examples 13 and 14, with a reasonable expectation of success."

The Examiner's rejections is respectfully traversed for the reasons detailed above with respect to the rejection in view of Zastrow '988 and Zastrow '988 in view of Chittofrati et. al.

In view of the remarks set forth herein, it is submitted that, whether taken alone or in combination, Zastrow '988, Zastrow '835 and Chittofrati et. al. do not render the presently pending claims obvious within the meaning of 35 USC § 103(a). Accordingly, the Examiner is respectfully requested to withdraw this rejection.

Conclusion

It is respectfully submitted that the claims as they have been amended are allowable over the art which has been applied in this Office Action. Favorable reconsideration and allowance of this application are courteously solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.



Respectfully submitted,
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